

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

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| CHICKASAW NATION and |) | |
| CHOCTAW NATION OF OKLAHOMA, |) | |
| |) | |
| Plaintiffs, |) | |
| |) | |
| vs. |) | Case No. CIV-11-927-G |
| |) | |
| KEVIN STITT, in his official capacity as |) | |
| Governor of the State of Oklahoma, <i>et al.</i> ; |) | |
| |) | |
| Defendants, |) | |

JOINT STATUS REPORT

By Order dated October 6, 2021, the Court directed the Choctaw Nation of Oklahoma and the Chickasaw Nation to advise the Court of the status of the above-captioned action. The Choctaw Nation of Oklahoma, the Chickasaw Nation, the State of Oklahoma, the Oklahoma Water Resources Board, and the City of Oklahoma City (collectively “the parties”) report to the Court as follows.

1. On August 10, 2016, this Court entered an order further staying this matter based on a report from the parties that a settlement agreement had been reached which resolved all issues in this case. The parties advised the Court that a joint motion to dismiss this action would be filed based on the settlement agreement at the appropriate time in conformance with the settlement agreement.

2. The settlement agreement was approved and ratified by the United States Congress on December 16, 2016, and subsequently enacted into federal law in Pub. Law 114-322, § 3608(i)(1)(A), 130 Stat. 1628, 1810 (“Congressional Act” or “Act”).

Satisfaction of the Conditions Precedent

3. The settlement agreement and the Act contain conditions precedent necessary for the full enforceability of the settlement agreement. *Id.* at § 3608(i). Specifically, the settlement agreement “shall take effect and be enforceable on the date on which the Secretary of the Interior (“Secretary”) publishes in the Federal Register a certification that” the following tasks are complete. *Id.* There are a total of nine conditions precedent outlined in the table below with a corresponding status report.

| Condition Precedent | Status Report |
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| Conform the settlement agreement to the Congressional Act to the extent that the settlement agreement conflicted. § 3608(i)(1)(A) | Completed |
| The conformed settlement agreement is executed by the Secretary the Nations, the Governor of the State of Oklahoma, the OWRB, the City, and the Trust. § 3608(i)(1)(B) | Completed |
| Conform the amended storage contract to the Congressional Act to the extent that the contract conflicted. § 3608(i)(1)(C) | Completed |

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| The amended storage contract is executed by the State, the City, and the Trust, as well as approved by the Secretary of the Army. § 3608(i)(1)(D) | Completed |
| An order is entered in <i>United States v. Oklahoma Water Resources Board</i> , Civ. 98-C-521-E, with any modifications to the order dated Sept. 11, 2009. § 3608(i)(1)(E) | Completed |
| Orders of dismissal are entered in <i>Chickasaw Nation</i> , <i>Choctaw Nation v. Stitt, et al.</i> , Civ 11-927 (W.D.Ok.) and <i>OWRB v. United States, et al.</i> , Civ. 12-275 (W.D.Ok.). § 3608(i)(1)(F) | See paragraph 4 below. |
| OWRB issues the City Permit. § 3608(i)(1)(G) | On June 1, 2020, the Pushmataha County District Court issued an Order denying the appeal of the OWRB's decision to issue the City Permit. The Order was appealed to the Oklahoma Supreme Court on July 2, 2020. The case has been fully briefed and is awaiting decisions by the court. |
| Final documentation of the Kiamichi Basin hydrologic model is on file at the Oklahoma City offices of the OWRB. § 3608(i)(1)(H) | Completed |

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| The Atoka and Sardis Conservation Projects Fund has been funded as provided in the settlement agreement. § 3608 (i)(1)(I) | Completed |
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Date by Which All Dispositive Motions in Conformance with the Settlement Agreement are Anticipated to Be Filed.

4. As explained in the table above, one condition precedent is still pending and it is working through appeal in the Oklahoma Supreme Court. Once all conditions precedent are satisfied, the parties will file a joint motion to dismiss in this matter simultaneous with a joint motion to dismiss in Case No. CIV 12-275-G.

5. The settlement agreement and the Act required the Secretary to publish the certification by September 30, 2020, however, both the settlement agreement (Sec. 4.4) and the Act (§ 3608(i)(4)) provide that the deadline “may be extended in writing if the Nations, the State, the OWRB, the United States, and the City agree that an extension is warranted.” The parties previously executed an extension agreement to March 31, 2022. Because the appeal in the Oklahoma Supreme Court is still pending, the parties again executed an agreement extending the deadline for the Secretary’s publication of the certification in the Federal Register until March 31, 2024.

6. The parties will continue to work diligently to complete the conditions precedent in a timeframe that allows the Secretary to publish finding on the satisfaction of the enforceability conditions in the Federal Register on or before March 31, 2024.

Whether Any Further Judicial Action is Necessary.

7. The parties request the Court continue the stay in this matter through December 1, 2022. On or before that date the parties will provide the next joint status report to the Court wherein the parties will update the Court on the conditions precedent and the other matters addressed herein.

Respectfully submitted,

/s/ Michael Burrage

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***Counsel for Defendants City of Oklahoma City,
and Oklahoma City Water Utilities Trust***

CERTIFICATE OF SERVICE

I hereby certify that on the 31st day of March, 2022, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing. Based on the records currently on file, the Clerk of Court will transmit a Notice of Electronic Filing to the ECF registrants.

/s/ Michael Burrage
Michael Burrage